

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

CARLA J. SCHREIBER, ) Case No. 8:05CV537  
vs. )  
Plaintiff, )  
vs. )  
STATE OF NEBRASKA, and THE )  
NEBRASKA STATE PATROL, )  
Defendants. )  
vs. )  
BRIEF IN OPPOSITION TO  
PLAINTIFF'S MOTION IN LIMINE TO  
EXCLUDE DEFENDANTS' EXPERT

**INTRODUCTION**

Plaintiff has filed a Motion in Limine requesting this Court to exclude Defendants' Expert. Defendants' Expert was retained to point out that Plaintiff's Expert, Jose Soto, did not present any verifiable data to show that the Plaintiff had been discriminated against.

**ARGUMENT**

Plaintiff has moved to strike the report of Dr. David Peterson, a statistician, because of limited factual basis. The purpose of Dr. Peterson's retention and report was to establish that Mr. Soto did not have sufficient data, did not present any comprehensive analysis that links Plaintiff's age or gender to those of any other Highway Patrol employee or to any of the promotion decisions being challenged by the Plaintiff. Mr. Soto issued opinions that "are at best a recitation of his interpretation of the facts in this case" and are not founded upon any "formal objective testable or falsifiable analysis." (Defendants' Exhibit 318).

The necessity for Dr. Peterson's report is predicated upon the fact that despite this Court precluding Plaintiff from amending her Complaint for the third time to assert a claim of disparate impact, Plaintiff continually attempts to raise that issue and has done so through Mr. Soto. The

need of Plaintiff to insist disparate impact is made clear by the fact that Plaintiff has failed to show any discriminatory treatment by the Defendant.

Upon reviewing Plaintiff's Brief it can be seen that in essence Plaintiff is arguing that the statistical data presented by Dr. Peterson should be excluded while the Plaintiff's witness may be permitted to rely upon such documentation. Such arguments cannot be sustained and it is urged that the report of Dr. Peterson be permitted to be introduced in this proceeding.

DATED this 14th day of December, 2006.

STATE OF NEBRASKA and NEBRASKA  
STATE PATROL, Defendants,

BY: JON BRUNING, #20351  
Attorney General

BY: s/Frederick J. Coffman  
Frederick J. Coffman, #10725  
Assistant Attorney General  
2115 State Capitol  
Lincoln, NE 68509  
(402) 471-2682  
[fred.coffman@ago.ne.gov](mailto:fred.coffman@ago.ne.gov)

Attorneys for Defendants.

#### **CERTIFICATE OF SERVICE**

It is hereby certified that on December 14, 2006, the foregoing Brief in Opposition to Plaintiff's Motion in Limine to Exclude Defendants' Expert was electronically filed with the Clerk of the Court using the CM/ECF system who will send notification to Vincent Valentino and Terri M. Weeks.

s/Frederick J. Coffman  
Frederick J. Coffman  
Assistant Attorney General